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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/764,986	01/26/2004	Jackson Streeter	ACULSR.036A	6785	
20995 KNOBBE MAI	7590 05/31/200 RTENS OLSON & BE	•	EXAMINER		
2040 MAIN ST	REET	JOHNSON III, HENRY M			
FOURTEENTI IRVINE, CA 9			ART UNIT	PAPER NUMBER	
			3739		
	•		NOTIFICATION DATE	DELIVERY MODE	
			05/31/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com eOAPilot@kmob.com

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		Application No.	Applicant(s)	_		
Office Astion O		10/764,986	STREETER, JACKSON			
	Office Action Summary	Examiner	Art Unit			
		Henry M. Johnson, III	3739			
Period fo	The MAILING DATE of this communication ap or Reply	pears on the cover sheet with	1 the correspondence address			
WHI(- Exte after - If NO - Failu Any	ORTENED STATUTORY PERIOD FOR REPL CHEVER IS LONGER, FROM THE MAILING D nsions of time may be available under the provisions of 37 CFR 1.5 SIX (6) MONTHS from the mailing date of this communication. O period for reply is specified above, the maximum statutory period are to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailing ed patent term adjustment. See 37 CFR 1.704(b).	NATE OF THIS COMMUNIC, 136(a). In no event, however, may a repwill apply and will expire SIX (6) MONTE, cause the application to become ABA	ATION. bly be timely filed HS from the mailing date of this communication. NDONED (35 U.S.C. § 133).			
Status						
1)⊠	Responsive to communication(s) filed on 09 A	April 2007.				
2a) <u></u> □	This action is FINAL . 2b)⊠ This action is non-final.					
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
	closed in accordance with the practice under	Ex parte Quayle, 1935 C.D.	11, 453 O.G. 213.			
Disposit	ion of Claims					
4)🖂	Claim(s) 1-23 is/are pending in the application	1.				
	4a) Of the above claim(s) 21-23 is/are withdraw	wn from consideration.				
·	Claim(s) is/are allowed.					
	Claim(s) <u>1-20</u> is/are rejected.	•				
/)∐ 8)□	Claim(s) is/are objected to.	ar alaatian raquiramant				
ا (٥	Claim(s) are subject to restriction and/o	or election requirement.				
Applicat	ion Papers					
•	The specification is objected to by the Examine					
10)🖂	The drawing(s) filed on 19 July 2004 is/are: a)	_ , ,_ ,_	•			
	Applicant may not request that any objection to the					
11)	Replacement drawing sheet(s) including the correct The oath or declaration is objected to by the E	· •	• •).		
•	under 35 U.S.C. § 119					
	Acknowledgment is made of a claim for foreign	a priority under 35 II S.C. 8	110(a) (d) or (f)			
-	☐ All b)☐ Some * c)☐ None of:	i priority under 33 0.3.C. §	1 13(a)-(u) 01 (1).			
۵,	1. Certified copies of the priority documen	ts have been received.				
	2. Certified copies of the priority documen		plication No			
	3. Copies of the certified copies of the price	ority documents have been r	eceived in this National Stage			
	application from the International Burea	u (PCT Rule 17.2(a)).				
* (See the attached detailed Office action for a list	of the certified copies not re	eceived.			
			•			
Attachmen			(PTO 440)			
2) Notice	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s).	ımmary (PTO-413) /Mail Date			
3) 🛛 Infor	mation Disclosure Statement(s) (PTO/SB/08) er No(s)/Mail Date <u>111705</u> .	5) Notice of Inf 6) Other:	ormal Patent Application	•		

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species A in the reply filed on April 9, 2007 is acknowledged.

Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on April 9, 2007.

Information Disclosure Statement

Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. See MPEP 609.05(b). Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

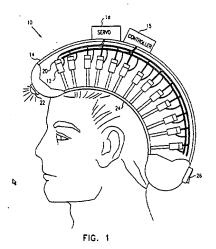
A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by International Publication Number WO 99/62599 to Oron. Oron teaches an apparatus for treatment of an ischemic region of brain cells in a cranium, comprising a skull covering adapted Application/Control Number: 10/764,986

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to cover at least part of the cranium, at least one guide attached to the skull covering, and a



laser source which is operative to direct a laser beam through the at least one guide into the cranium. Treatment parameters are disclosed as a wavelength of 807 nanometers with a 400 mW maximal output power configured so that the power to the treated brain tissue is 8mW/cm² (page 6, line 27). This is the predetermined power density to the target area and clearly requires a determination of the attenuation as the radiation penetrates the skull and brain tissue. The duration time is

disclosed as two minutes (page 6, line 25). Clearly the light source is placed adjacent the skull to penetrate the skull.

Where a reference discloses the terms of the recited method steps, and such steps necessarily result in the desired and recited effect, that the reference does not describe the recited effect *in haec verba* is of no significance as the reference meets the claim under the doctrine of inherency. Ex parte Novitski, 26 USPQ2d 1389, 1390-91 (BdPatApp & Inter 1993).

Regarding claim 14, no additional positive steps are cited and therefore do not further limit the method claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over International Publication Number WO 99/62599 to Oron. Oron clearly irradiates a target area of a cranium. The manner in which the source is positioned has not been disclosed as critical or yielding any unexpected result and is therefore considered a matter of choice of a skilled artesian.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 7, 9 and 16 of copending Application No. 11/038770. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are an obvious change in scope.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claims 1-4, 7 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/764986. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are an obvious change in scope.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,671,285 to Walker teaches treating nerve damage by the application of monochromatic light.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Henry M. Johnson, III Primary Examiner

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